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| 10/559,860 | 12/06/2005 | Ali Nilfuroshan | | 7437 |

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| EXAMINER | |
|---|---|
| NGUYEN, SON T | |
| **ART UNIT** | **PAPER NUMBER** |
| 3643 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/559,860 | NILFUROSHAN, ALI | |
| | Examiner | Art Unit | |
| | Son T. Nguyen | 3643 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *17 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *61-69* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *61-69* is/are rejected.

7)☒ Claim(s) *62-69* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Objections*

1. Claims 62-69 objected to because of the following informalities: the claims are dependents of canceled claim 1. For purpose of examination, these claims will be considered dependents of claim 61. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 61 & 68** are rejected under 35 U.S.C. 102(b) as being anticipated by Taudauchi et al. (JP410113088A).

For claim 61, Taudauchi et al. a temperature altering system, comprising: a blanket 1 sized and dimensioned to lie across the back of a horse (the back of the neck, see abstract); first and second pockets 22, each of which has a cavity that includes a removable temperature altering device 21, and each of which is freely positionable about the blanket using hook and loop fasteners 32; and the blanket having a flap 152,153 sized and dimensioned to secure the blanket to the horse. Note that the claim language is broad by stating "back of the horse" without specifying what part of the body is the back of the horse. Thus, as stated in the abstract of Taudauchi et al., the blanket 1 lies across the back of the neck of the horse.

For claim 68, Taudauchi et al. further teach wherein the pockets mate with a bottom side of the blanket. See fig. 1.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. **Claims 61,63,65,67** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. (5537954) in view of Taudauchi et al. (as above).

For claim 61, Beeghly et al. teaches a temperature altering system, comprising: a blanket 10,12 sized and dimensioned to lie across the back of a horse; first and second pockets 14, each of which has a cavity that includes a removable temperature altering device 40; and the blanket having a flap (col. 5, lines 23-27) sized and dimensioned to secure the blanket to the horse. Note that Beeghly et al. teaches in col. 5, lines 20-25, that the blanket can be sized and dimensioned for different animals. Thus, although shown for a dog, the blanket can be sized accordingly to other animals such as a horse. Also, if the horse is small such as a pony, it will be able to fit the blanket as shown for a dog. However, Beeghly et al. are silent about the pockets being freely positionable about the blanket using hook and loop fasteners.

As mentioned in the above, Tadauchi et al. teach in the same field of endeavor of animal cover as that of Beeghly et al., in which Tadauchi et al. employ attachable/detachable pockets 22 (by using hook and loop 32) containing removable

temperature altering device 21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pockets of Beeghly et al. be attachable/detachable by using hook and loop material as taught by Tadauchi et al. in order to allow a user to removably place the pockets with the temperature altering device in various area of the animal's body as desired. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 63, Beeghly et al. as modified by Taudauchi et al. (emphasis on Beeghly et al.) further teaches wherein the first pocket has a flap 32 disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

For claim 65, Beeghly et al. as modified by Taudauchi et al. (emphasis on Beeghly et al.) further teaches wherein the first pocket has a button 36 disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

For claim 67, Beeghly et al. as modified by Taudauchi et al. (emphasis on Beeghly et al.) further teaches wherein the pockets mate with a top side of the blanket. See fig. 1, self explanatory.

6. **Claims 62,66,69** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. as modified by Taudauchi et al. as applied to claim 61 above, and further in view of Newman (5271211).

For claim 62, Beeghly et al. as modified by Taudauchi et al. are silent wherein the blanket has an underside that includes a wicking material.

Newman teaches in the same field of endeavor of animal cover as that of Beeghly et al. and Taudauchi et al., in which Newman's cover 24 includes a wicking material on an underside of the cover (col. 6, lines 25-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a wicking material as taught by Newman on the underside of the blanket of Beeghly et al. as modified by Taudauchi et al. in order to promote evaporation of perspiration away from the body of the animal (col. 6, lines 25-34 of Newman). KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 66, in addition to the above, Newman also teaches a reflective material on the top panel 100 of the cover 24 (col. 6, lines 25-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a reflective material as taught by Newman on a side adjacent the blanket of Beeghly et al. as modified by Taudauchi et al. in order to promote heat or sun reflectance (col. 6, lines 35-36 of Newman). KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 69, in addition to the above, Newman also teaches wherein a flap 124,120,122 is positioned to secure the blanket at a rear portion of the horse. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a flap as taught by Newman in the rear portion of the blanket of Beeghly et al. as modified by Taudauchi et al. in order to further secure the blanket onto the animal. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

7. **Claim 64** is rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. as modified by Taudauchi et al. as applied to claim 61 above, and further in view of Fazio (6443101).

Beeghly et al. as modified by Taudauchi et al. (emphasis on Beeghly) teach button snap 36 as the preferred fastener for the opening in the pockets but not zipper as the preferred fastener.

Fazio teaches in the same field of endeavor of animal cover as that of Beeghly et al. and Taudauchi et al., in which Fazio employ a pocket 80 with zipper to close the opening 82 of the pocket. It would have been an obvious substitution of functional equivalent to substitute the button snap of Beeghly et al. as modified by Taudauchi et al. with a zipper as taught by Fazio, since a simple substitution of one known element for another would obtain predictable results. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-60 (which have been canceled) have been considered but are moot in view of the new ground(s) of rejection. However, certain pertinent argument will be addressed herein.

**Applicant argued that Taudauchi doesn't use pockets at all, but instead appears to position the heating/cooling pads directly against the supporting fabric.**

Clearly from the abstract, drawings and translation, that Tadauchi employs pockets 22 to contain pads 21. This is clearly shown in fig. 3. These pads 21 are placed

inside pockets 22 to prevent the pads from direct contact with the animal (see [0011] of the translation).

**Applicant argued that Taudauchi's pads are not freely positionable.**

Again, clearly from the abstract, drawings and translation, Taudauchi does teach the pads being freely positionable or attachable/detachable by using hook and loop material (shown as ref. 32). A user can place these pads and pockets in various location on the blanket as desired due to the hook and loop material 32 (see paragragh [0014]). It is clearly not true that the pads and pockets are only positioned as shown in the drawing as alleged by Applicant. If this is so, the Examiner would like to request that Applicant points out which paragraphs or excerpts from Taudauchi that clearly teaches this. The paragraph [0003] provided by Applicant does not teach the pads and pockets being positioned only as shown in the drawing. Even if one was to assuming the same scenario as that of Applicant, the pads and pockets of Taudauchi are free to be positioned in their confined area as shown in fig. 1, which still meet the claimed limitation of freely positionable about the blanket. In the area from ref. 13 to ref. 151 of fig. 1, the user can freely positioned the pads and pockets as desired in this zone.

**Applicant's statement of "Claims 62-69 are all allowable (among other things) by virtue of their dependence upon allowable claim 39" in the response filed 9/17/07 is unclear.**

The Examiner has not indicated any allowable subject matter, thus, it is unclear as to why Applicant believes that claim 39 is allowable and that claims 62-69 should also be allowable, especially when claim 39 is canceled.

***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 61-69** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1-5,7,8,11-17** of copending Application No. 10/807695. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim the same animal cover comprising a body having interior and exterior sides, a temperature altering device, a plurality of cavities. In addition, both applications claim the same positions of the temperature altering device placed on the cover.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son T Nguyen
Primary Examiner
AU 3643